

HIGH COURT OF CHHATTISGARH, BILASPUR**WPS No. 2214 of 2005**

Chedilal Ratre

---- **Petitioner****Versus**

State And Ors.

---- **Respondents**

For Petitioner	:	Mr. Jitendra Gupta, Advocate
For State	:	Mr. D.R. Minj, Dy. G.A.

Hon'ble Shri Justice Manindra Mohan Shrivastava**Order On Board****31/01/2017**

Heard.

1. The petitioner filed an original application before the then, Madhya Pradesh State Administrative Tribunal, Bhopal assailing correctness and validity of the order passed by the Appellate Authority as well as disciplinary authority in the matter of departmental enquiry, imposing a major penalty of reversion. The Tribunal was, later on, abolished and the case was transferred to this Court.

2. While the petitioner was working as Co-operative Inspector, a charge-sheet containing as many as 13 charges was issued to the petitioner by the disciplinary authority on 30.09.1991. The petitioner submitted his reply to the charge-sheet. The disciplinary authority, however, not satisfied with the same, appointed enquiry officer. Thereafter, the enquiry officer held the enquiry and after recording oral evidence of the parties and collecting other material documentary evidence, prepared enquiry report holding all the charges proved against the petitioner. Thereafter, the copy of enquiry report was also indisputably supplied to the petitioner. The petitioner gave his reply and written submission on the enquiry report. However, vide order dated 30.04.1996, Commissioner Cooperative Society held the charges proved against the petitioner, concurring with the enquiry report and imposed penalty of

reduction from the post of Co-operative Inspector to that of Sub-Auditor and also passed an order that the petitioner shall be placed on the lower stage of pay on the post of Sub-Auditor. Aggrieved by the order, the petitioner preferred an appeal before the State Government. Vide impugned order dated 03.02.1997, the State Government partly allowed the appeal. While affirming order of reversion from the post of Co-operative Inspector to Sub-Auditor, reduction to the lower stage of pay was set aside, giving rise to this petition.

3. Assailing correctness and validity of the proceedings and the penalty order as also the order passed by the Appellate Authority, learned counsel for the petitioner made following submissions :

(a) As in the matter of promotion of the petitioner to the post of Co-operative Inspector in the year 1985, approval of the Public Service Commission was taken, the petitioner could not be subjected to penalty of reduction in rank without approval of the Public Service Commission.

(b) In the order of penalty, no period for which the petitioner has to remain on the lower post, has been specified which is illegal and contrary to Rule 10 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 (for short "the Rules of 1966").

(c) The petitioner had come on deputation to the Society only on 25.09.1987 and remained there till 08.03.1991 but the charges against the petitioner relate to the period prior to the date of his posting.

(d) The enquiry is vitiated because the enquiry officer was biased against the petitioner.

(e) During departmental enquiry, the witnesses, as requested by the petitioner, were not examined resulting in denial of proper opportunity of hearing.

4. Elaborating his submission, learned counsel for the petitioner argued that the petitioner was promoted to the post of Co-operative Inspector in the year 1985. At the time of his appointment, the Government sent the matter for approval of the Public Service Commission. Therefore, while reverting the petitioner from the post of Co-

operative Inspector, the same procedure which was followed in the matter of his appointment, ought to be followed and unless Public Service Commission was consulted and approval was obtained, the petitioner could not be reverted.

5. It is next contended that the disciplinary authority as well as Appellate Authority imposed the penalty of reduction to a lower post. But in the order, there is no prescription of the period for which the petitioner has to continue on the lower post. According to learned counsel for the petitioner, reduction to a lower post cannot remain indefinite but there has to be a definite period prescribed in the order itself, and if it is not done, the order is illegal, arbitrary and contrary to the provision contained in Rule 10 of the Rules of 1966. Learned counsel for the petitioner further contended that the petitioner was harassed and victimized at the instance of the then Joint Director Somprakash Agrawal. It is submitted that number of irregularities may have been committed even prior to the petitioner's posting on deputation with effect from 25.09.1987. For all those irregularities, the petitioner could not be held responsible and charge-sheeted or punished. It is also submitted that Shri C.S. Kuril was appointed as enquiry officer. According to the petitioner, Shri C. S. Kuril was acting under the influence of the then Joint Director Somprakash Agrawal. Somprakash Agrawal had serious bias and prejudice against the petitioner because the petitioner had made a complaint against Shri Somprakash Agrawal in the Police Station. It was, at the instance of Shri Somprakash Agrawal that the enquiry was initiated and throughout the enquiry, Shri C.S. Kuril did not afford proper opportunity to defend. It is submitted that two witnesses cited by the prosecution Shri M.R. Verma and Mahdole Singh were not summoned despite repeated request made by the petitioner to the enquiry officer. It is submitted that these two persons were very important witnesses to support petitioner's case that the petitioner had not committed any financial irregularities and that in the matter of calling of meeting, it was the President of the Board of Director, who was competent and not the petitioner. Lastly, it is submitted that the petitioner had also submitted a list of defence witnesses but those witnesses were not allowed to be examined resulting in serious prejudice to the petitioner. Therefore, for all these reasons, the enquiry is vitiated and the impugned order is liable to be set aside.

6. On the other hand, learned counsel for the State submits that the departmental enquiry was held after following the principles of natural justice and the provision contained in the Rules of 1966. The charge-sheet was issued to the petitioner and he was afforded an opportunity to file reply. Thereafter, an enquiry officer was appointed, who afforded the petitioner due opportunity to lead evidence. The witnesses of the petitioner were summoned and the two witnesses had appeared. The petitioner, himself, did not examine, thereafter, they did not appear on subsequent dates. It is also submitted that the petitioner's case that he made an application to call for examination of those prosecution witnesses, who were not examined by the prosecution, is not supported from any material on record. Lastly, it is submitted that the petitioner's reply was duly considered, all the charges were found proved. The disciplinary authority and appellate authority both applied their mind to various grounds raised by the petitioner and thereafter in these circumstances, the impugned order does not suffer from any procedural defect, violation of principle of natural justice, illegality or malafide so as to warrant interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

7. I have heard the submissions of learned counsel for the parties, perused the records and also original records relating to enquiry placed before this Court by learned counsel for the State.

8. The submission of learned counsel for the petitioner that in the matter of disciplinary enquiry, the penalty order could not be passed without seeking approval of the Public Service Commission is only founded on the submission that at the time of his appointment by way of promotion to the post of Co-operative Inspector, approval of the Public Service Commission was obtained. Learned counsel for the petitioner could not bring to the notice of this Court any provision contained either in Rule 14 or any other Rules of 1966, that in respect of an officer in the rank of the petitioner, a major penalty of reduction to a lower post could not be imposed except upon approval of Public Service Commission. Rule 10 of the Rules of 1966 provides for the penalty which could be imposed on a Government servant which includes minor as well as major penalty both. Rule 12 of the Rules of 1966 provides for the disciplinary authorities. This Rule also does not contain any specific provision so as

to say that in the matter of imposition of penalty, approval of the Public Service Commission is to be obtained. The procedure for imposing penalty has been exhaustively dealt with under the Rules of 1966. Rule 14 of the Rules of 1966 elaborately deals with each and every stage of the enquiry from the stage of issuance of charge-sheet upto imposition of penalty. Nothing contained in Rule 14 & 15 of the Rules of 1966 supports the contention of the petitioner that before imposition of penalty, approval of Public Service Commission ought to be taken. Therefore, the contention that in the present case, the order of penalty could not be passed without approval of the Public Service Commission is liable to be rejected.

Under the statutory scheme of the Rules of 1966, which not only provides for appointment but also for classification and disciplinary matters, different procedure has been prescribed in the matter of appointment and for imposition of penalty. Even if it is assumed that while making an appointment, there was some requirement of obtaining the approval of Public Service Commission, it does not automatically follow that the same procedure ought to be followed, in the absence of there being any specific provision that the same procedure is required to be followed in the matter of disciplinary proceedings also. The disciplinary proceedings are required to be held and the orders are required to be passed in accordance with the statutory scheme framed for such purposes. Once, it is found that none of the provision required, approval of the Public Service Commission, the contention of the petitioner deserves to be rejected.

9. The other submission that while imposing penalty of reduction to a lower post, no period has been prescribed is required to be examined in the light of relevant provision contained in Rule 10 of the Rules of 1966 for ready reference. Rule 10 is extracted herein below :

“10. Penalties – The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely :-

Minor Penalties :-

- (i) Censure;
- (ii) Withholding of his promotion;
- (ii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of order;

- (iii) Withholding of increments of pay or stagnation allowance;

Major Penalties :-

- (v) reduction to a lower stage in the time scale of pay for a specified period with further directions as to whether or not, the Government servant will earn increments of pay or the stagnation allowance, as the case may be, during the period, on such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the further increments of his pay or stagnation allowance.
- (vi) reduction to a lower time scale of pay, grade, post or service which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service;
- (vii) Compulsory retirement;
- (viii) removal from service which shall not be a disqualification for future employment under the Government;
- (ix) dismissal from service which shall ordinarily be a disqualification for future employment under the Government;"

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The aforesaid provision provides for minor penalty as well as major penalty. There is an explanation given at the bottom of the Rule as to what would not amount to a penalty within the meaning of the Rule.

10. Reduction to a lower time scale of pay, grade, post or service has been specified as one of the major penalties under clause (vi) of the Rule 10 of the Rules of 1966. It provides for reduction to a lower time scale of pay, grade, post or service with or without further directions regarding conditions of restoration to the grade or post or service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or service. Therefore, it is not incumbent on the part of the disciplinary authority to necessarily restrict the period for which the reduction to a lower post shall remain in force. Use of word "with or without further direction" is clearly indicative of discretion conferred on the disciplinary authority. While it is within the authority of the disciplinary authority to limit the period of reversion, in appropriate cases, the disciplinary authority may impose penalty of reduction to a

lower post, grade or service indefinitely without putting any fetter on the period for which it has to remain in force. In fact, the Rule, itself, provides that such a penalty of reduction shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or service from which he was reduced. Therefore, Rule has conferred a very wide discretion on the disciplinary authority to impose penalty, appropriate and commensurate to the nature and gravity of misconduct alleged against the Government servant. In the present case, the disciplinary authority having considered the case, nature and gravity of allegation decided to impose penalty of reduction to a lower post without limiting it to any period.

11. The petitioner has raised an important submission with regard to violation of principle of natural justice on two counts. Firstly, it has been contended that the petitioner wanted to examine as defence witnesses, two prosecution witnesses namely R.N. Verma and Mahdole Singh, who were not called by the enquiry officer. The petitioner, as asserted, repeatedly requested the enquiry officer to call those witnesses but they were not called. In the return, the respondents have said that enquiry was held after following principle of natural justice and the petitioner was afforded opportunity to lead defence witnesses also. All adverse allegations, in the petition, have been denied. In view of denial, it was the burden on the part of the petitioner to establish that two prosecution witnesses, which the prosecution did not examine, were cited as defence witness of the petitioner and despite request, the petitioner was not allowed to examine. At the first place, there is no application in writing filed by the petitioner along with the petition containing acknowledgment of the enquiry officer that he requested the enquiry officer that prosecution witnesses, who could not be examined, should be examined. In the record relating to enquiry placed before this Court, there is a report submitted to the appellate authority by the Joint Director. In that report, based on the materials of enquiry, it has been stated that though in the departmental enquiry, the name of Shri R.N. Verma Accountant and Shri Mahdole Singh President was included and they were also sent summons but despite summoned, the said witnesses did not appear. In the said '*prativedan*' (report), it has been stated that the petitioner's version that request for examination of Shri Mahdole Singh is not correct.

His name was included as prosecution witnesses but when despite summons, he did not appear, enquiry was proceeded. It has also been stated that in the report that there is no record available to support the allegation that the petitioner had made an application for calling those persons as witness. Therefore, in the absence of there being any application on record filed by the petitioner or any other application in writing available in the records placed before this Court, I am unable to hold that despite application of the petitioner, those two prosecution witnesses were not called.

12. The other allegation that the defence witnesses of the petitioner were also not examined, is also not correct in view of what has been stated in para 6 & 7 of the report of Joint Director. It reflects that the petitioner had given the names of 5 persons as his witness which was allowed. It records that on 11.08.92, a date was fixed for recording evidence of petitioner's witness. On 04.09.92 and summons were also issued to them. Two witnesses of the petitioner, R.K. Pandey and Ramlal, Mill Driver, also appeared on 04.09.92 but the petitioner refused to examine and requested that they may be examined on the next date of hearing on 15.09.92. On 04.11.92 these witnesses did not appear. Therefore, from the aforesaid report, the petitioner's grievance does not appear to be correct.

13. The petitioner has sought to assail the enquiry on the ground that enquiry officer was not changed despite request of the petitioner. The petitioner's letter seeking change of enquiry officer, placed on record Annexure A/10, shows that the petitioner had the apprehension that the enquiry officer Shri C. S. Kuril may be acting under the influence of the then Joint Director Somprakash Agrawal. However, this apprehension is without any material. Merely because, the officer against whom allegation of malice leveled against the petitioner happens to be a senior one, one could not jump to the conclusion that any officer subordinate to the senior officer would be disqualified to act as enquiry officer. In fact, the report placed on the original records shows that the petitioner was given due opportunity of hearing. Therefore, the apprehension of the petitioner that the enquiry officer was biased, is not based on any concrete material. The allegation of bias are required to be established by cogent evidence. Allegations of malice or bias cannot be accepted on mere submission but

are required to be proved by relevant and clinching evidence which is not present in the given case. Therefore, I am unable to hold that the enquiry is vitiated only on the ground that Mr. C.S. Kuril was biased against the petitioner.

14. Learned counsel for the petitioner raised various submissions to say that the findings which have been recorded against the petitioner are not correct and his version of defence has not been properly considered. It was the burden of the petitioner to demonstrate the same by referring to the findings recorded by the enquiry officer. However, the petitioner has not even placed on record the enquiry report. Order of the disciplinary authority and appellate authority go to show that both the authorities have applied their mind to the reply of the petitioner, at two different stages and recorded finding that the charges against the petitioner are found proved.

15. This Court would not assume the role of appellate authority to reassess the oral and documentary evidence on record. Even if the contention of the petitioner is accepted, it would only lead to existence of another possible view. But that could not be a ground to warrant interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India. In the absence of there being any ground made out that the findings are without any evidence, perverse or contrary to evidence on record, merely because on a given set of evidence, two views are possible, one taken by the enquiry officer, disciplinary authority and appellate authority and the other expressed by the petitioner, this Court would not enter into this exercise.

16. In the result, the petition is dismissed.

Sd/-

(Manindra Mohan Shrivastava)
Judge